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SENATE BILL 1023

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Lidi o G. Rainaldi

AN ACT

RELATING TO CRIMES; AMENDING THE INDIAN ARTS AND CRAFTS SALES  
ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-33-1 NMSA 1978 (being Laws 1929,  
Chapter 33, Section 1, as amended) is amended to read:

"30-33-1. SALE OF INDIAN-MADE ARTICLES AS GENUINE. --It is  
unlawful to barter, trade, sell or offer for sale or trade any  
article represented, directly or indirectly, expressly or by  
implication or omission, as produced by an Indian unless the  
article is produced, designed or created by the labor or  
workmanship of an Indian."

Section 2. Section 30-33-6 NMSA 1978 (being Laws 1959,  
Chapter 133, Section 4, as amended) is amended to read:

"30-33-6. INQUIRY AS TO PRODUCER--DUTY OF INQUIRY--

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1     ~~[ELECTION]~~ REQUIREMENT TO LABEL ~~[AUTHENTIC]~~ NON-AUTHENTIC  
2     INDIAN ARTS AND CRAFTS. --

3             A. It is the duty of every person selling or  
4     offering for sale a product that is represented to be authentic  
5     Indian arts or crafts to make due inquiry of his suppliers  
6     concerning the true nature of the materials, product design and  
7     process of manufacture to determine whether the product may be  
8     lawfully represented as authentic Indian arts or crafts.

9             ~~[B.— Each person may elect to label or otherwise~~  
10    ~~clearly and conspicuously disclose as authentic Indian arts and~~  
11    ~~crafts all articles that are authentic Indian arts and crafts~~  
12    ~~in accordance with the Indian Arts and Crafts Sales Act and~~  
13    ~~regulations adopted pursuant to that act.]~~

14             B. It is the duty of each person, including each  
15    artist, wholesaler, jobber and retailer, who sells or offers  
16    for sale, or who barter or trades any Indian-style article  
17    that is not "authentic Indian arts and crafts" as defined in  
18    Subsection C of Section 30-33-4 NMSA 1978, including any  
19    "Indian crafted" article, to clearly and conspicuously label  
20    each and all such articles as not authentic Indian arts and  
21    crafts. Labeling may be for individual articles, or may be in  
22    groupings or collections, provided that the labeling clearly  
23    applies to all articles in the grouping or collection.

24             C. Consistent with the purposes of the Indian Arts  
25    and Crafts Sales Act, regulations adopted under that act may

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1 specify designations other than "authentic Indian arts and  
2 crafts", including a designation such as "Indian crafted", for  
3 authorized labeling as Indian arts and crafts. "

4 Section 3. Section 30-33-7 NMSA 1978 (being Laws 1973,  
5 Chapter 163, Section 5, as amended) is amended to read:

6 "30-33-7. UNLAWFUL ACTS. --It is unlawful for any person  
7 to:

8 A. sell or offer for sale any products represented,  
9 directly or indirectly, expressly or by implication or  
10 omission, to be Indian handmade or authentic Indian arts and  
11 crafts unless such products are in fact Indian handmade or  
12 authentic Indian arts and crafts;

13 B. sell or offer for sale any products represented,  
14 directly or indirectly, expressly or by implication or  
15 omission, to be Indian crafted unless such products are in fact  
16 Indian crafted;

17 C. represent, directly or indirectly, expressly or  
18 by implication or omission, that any Indian arts and crafts  
19 product is made of a material, including natural material,  
20 unless it is made of that material;

21 D. fail to disclose both orally and in writing that  
22 any Indian arts and crafts product is made of treated material,  
23 reconstructed material or synthetic material;

24 E. solicit or buy for resale as authentic Indian  
25 arts and crafts any products that are known in fact not to be

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1 authentic; [~~or~~]

2 F. fail to clearly and conspicuously label non-  
3 authentic Indian-style articles as required by Subsection B of  
4 Section 30-33-6 NMSA 1978; or

5 [~~F-~~] G. prepare, disseminate or otherwise engage in  
6 any unfair or deceptive trade practice, including any false,  
7 misleading or deceptive advertising, or any unconscionable  
8 trade practice, regarding Indian arts or crafts. For the  
9 purpose of this subsection, "unfair or deceptive trade  
10 practice" and "unconscionable trade practice" mean "unfair or  
11 deceptive trade practice" and "unconscionable trade practice"  
12 as those terms are defined in Section 57-12-2 NMSA 1978. "

13 Section 4. Section 30-33-8 NMSA 1978 (being Laws 1973,  
14 Chapter 163, Section 6, as amended) is amended to read:

15 "30-33-8. ENFORCEMENT BY ATTORNEY GENERAL OR DISTRICT  
16 ATTORNEY.--The attorney general or a district attorney with  
17 jurisdiction over a matter [~~shall~~] is authorized to enforce the  
18 provisions of the Indian Arts and Crafts Sales Act. The [~~New~~  
19 ~~Mexico office of~~] Indian affairs department and an authorized  
20 tribal prosecutor ~~may~~ assist the office of the attorney general  
21 or the district attorney in determining whether the provisions  
22 of the Indian Arts and Crafts Sales Act have been or are being  
23 violated. Either the attorney general or a district attorney  
24 with jurisdiction over a matter ~~may~~ take action to enforce the  
25 provisions of the Indian Arts and Crafts Sales Act in either

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1 civil or criminal proceedings, or both, including actions for  
2 criminal penalties, injunctive relief, restitution, damages and  
3 civil penalties. "

4 Section 5. Section 30-33-9 NMSA 1978 (being Laws 1977,  
5 Chapter 334, Section 6, as amended) is amended to read:

6 "30-33-9. VIOLATION OF ACT--PENALTIES. --

7 A. In an action brought by the attorney general or  
8 a district attorney for a violation under the provisions of the  
9 Indian Arts and Crafts Sales Act, the district court may order  
10 temporary or permanent injunctive relief. The district court  
11 shall order restitution and such other relief as may be  
12 necessary to redress injury to any person resulting from the  
13 violation.

14 B. In any action brought under this section, if the  
15 court finds that a person is willfully using or has willfully  
16 used a method, act or practice declared unlawful by the Indian  
17 Arts and Crafts Sales Act, the attorney general or district  
18 attorney, upon petition to the court, may recover, on behalf of  
19 the state of New Mexico, a civil penalty not to exceed [~~five~~  
20 ~~hundred dollars (\$500)] five thousand dollars (\$5,000) per  
21 violation.~~

22 C. Any person willfully and knowingly violating the  
23 provisions of the Indian Arts and Crafts Sales Act is guilty of  
24 a petty misdemeanor when the violation involves property valued  
25 at less than [~~two thousand five hundred dollars (\$2,500)] one~~

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1 hundred dollars (\$100) and shall be punished by a fine of not  
2 less than one hundred dollars (\$100) per violation per day, up  
3 to a ~~maximum~~ fine of five hundred dollars (\$500), or by  
4 imprisonment in the county jail for a definite term not to  
5 exceed six months, or both.

6 D. Any person willfully and knowingly violating the  
7 provisions of the Indian Arts and Crafts Sales Act is guilty of  
8 a misdemeanor when the violation involves property valued at or  
9 in excess of [~~two thousand five hundred dollars (\$2,500)~~] one  
10 hundred dollars (\$100) and less than [~~twenty thousand~~  
11 ~~(\$20,000)~~] two hundred fifty dollars (\$250) and shall be  
12 punished by a fine of not less than one hundred dollars (\$100)  
13 per violation per day, up to a ~~maximum~~ fine of one thousand  
14 dollars (\$1,000), or by imprisonment in the county jail for not  
15 more than one year, or both.

16 E. Any person willfully and knowingly violating the  
17 provisions of the Indian Arts and Crafts Sales Act is guilty of  
18 a fourth degree felony when the violation involves property  
19 valued at or in excess of [~~twenty thousand dollars (\$20,000)~~]  
20 two hundred fifty dollars (\$250) and less than two thousand  
21 five hundred dollars (\$2,500) and shall be punished by a fine  
22 of not less than one hundred dollars (\$100) per violation per  
23 day, up to a ~~maximum~~ fine of five thousand dollars (\$5,000), or  
24 up to eighteen months imprisonment in the county jail, or both.

25 F. Any person willfully and knowingly violating the

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1 provisions of the Indian Arts and Crafts Act is guilty of a  
2 third degree felony when the violation involves property valued  
3 at or in excess of two thousand five hundred dollars (\$2,500)  
4 but less than twenty thousand dollars (\$20,000), and shall be  
5 punished by a fine of not less than two hundred dollars (\$200)  
6 per violation per day, up to a maximum fine of five thousand  
7 dollars (\$5,000), or up to three years imprisonment, or both.

8 G. Any person willfully and knowingly violating the  
9 provisions of the Indian Arts and Crafts Act is guilty of a  
10 second degree felony when the violation involves property  
11 valued at or in excess of twenty thousand dollars (\$20,000),  
12 and shall be punished by a fine of not less than five hundred  
13 dollars (\$500) per violation per day, up to a maximum fine of  
14 ten thousand dollars (\$10,000), or up to nine years  
15 imprisonment, or both."

16 Section 6. Section 30-33-10 NMSA 1978 (being Laws 1977,  
17 Chapter 334, Section 7, as amended) is amended to read:

18 "30-33-10. PRIVATE RIGHT OF ACTION--DAMAGES.--Any person  
19 who suffers financial injury or damages by reason of any  
20 conduct declared in violation of the provisions of the Indian  
21 Arts and Crafts Sales Act may sue in district court. Upon a  
22 showing that that act is being violated, the court [~~may~~] shall  
23 award actual damages or the sum of one hundred dollars (\$100),  
24 whichever is greater, and order injunctive relief and shall  
25 award the cost of the suit, including reasonable [attorneys']

1 attorney fees and the costs and fees of any expert witness whom  
2 the court determines was reasonably necessary to the plaintiff's  
3 case or who testifies at trial for the plaintiff. Where the  
4 court finds that the party charged with violating the Indian  
5 Arts and Crafts Sales Act has willfully violated that act, the  
6 court may award treble damages or the sum of three hundred  
7 dollars (\$300), whichever is greater, to the party complaining  
8 of the violation. "

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